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No. 87-1513

IN THE

Supreme Court of the United States

OCTOBER TERM, 1987

SECURITIES INDUSTRY ASSOCIATION,
Petitioner,

v.

BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM, *et al.*,
Respondents.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Second Circuit

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BRIEF IN OPPOSITION FOR RESPONDENTS BANKERS TRUST NEW YORK CORPORATION, J.P. MORGAN & CO. INCORPORATED AND CITICORP, *ET AL.*

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QUESTIONS PRESENTED

1. Does Section 20 of the Glass-Steagall Act limit the extent to which a bank affiliate may underwrite securities that Glass-Steagall authorizes a bank itself to underwrite without limitation?

2. Is a bank affiliate "engaged principally" in activities covered by Section 20 of Glass-Steagall if those activities account for less than 5% of its business?

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Respondents Bankers Trust New York Corporation, J.P. Morgan & Co. Incorporated, Citicorp, The Chase Manhattan Corporation, Manufacturers Hanover Corporation, Chemical New York Corporation and Security Pacific Corporation (the "bank holding companies")[1]

[1] A list of the subsidiaries (except wholly-owned subsidiaries) and affiliates of each of the respondent bank holding companies, as

respectfully request that this Court deny the petition for a writ of certiorari filed by the Securities Industry Association ("SIA") seeking review of the decision of the United States Court of Appeals for the Second Circuit in this case. *See* 839 F.2d 47 (1988) (Pet. App. 1a).[2]

STATEMENT OF THE CASE

In this case SIA challenges established legal principles that have been routinely and consistently applied for years by the Board of Governors of the Federal Reserve System (the "Board").

For the past decade, the Board has authorized nonbank subsidiaries of bank holding companies to underwrite and deal in U.S. Treasury securities, municipal general obligation bonds, and other securities that banks themselves may underwrite without limitation ("bank-eligible" or "governmental" securities). In its decision below, the Board construed the Glass-Steagall Act to permit a governmental securities subsidiary also to engage, to a limited extent, in underwriting certain kinds of securities that banks may not underwrite ("bank-ineligible" securities).

SIA's petition is based on a business concern that its members may be subjected to a small amount of additional competition in the markets for *bank-ineligible* securities. But the legal proposition at the heart of the rulings below is the Board's long-standing, and previously unchallenged, conclusion that Section 20 of the Glass-Steagall Act does not limit the extent to which bank affiliates may underwrite *bank-eligible* securities such as

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required by Rule 28.1 of the Rules of the Supreme Court, is attached as Appendix A. None of the respondent bank holding companies has a parent corporation.

[2] The Petition for Writ of Certiorari and the Appendix to the Petition are cited herein as "Pet. ——" and "Pet. App. ——."

U.S. Treasury bonds. This is the only *legal* issue that SIA seriously addresses in its petition for review.[3]

The Glass-Steagall Act. Congress passed the Glass-Steagall Act to protect banks and their depositors from the risks Congress perceived to be associated with bank involvement in certain securities activities. To this end, Sections 16 and 21 of the Act generally prohibit banks from underwriting securities to any extent.[4] But these provisions expressly permit banks to underwrite U.S. Treasury securities, municipal general obligation bonds, and certain other governmental securities. Congress permitted banks to underwrite these "bank-eligible" securities without restriction because bank participation in these

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[3] SIA's petition is consistent with its well-established practice of using litigation to stave off for as long as possible *any* threat to the competitive position of its members. SIA's insistence that this case "is of enormous national significance to the financial markets throughout the country," Pet. 10, is also consistent with its practice of overstating the importance of cases it presents for review. In its recent petition for review in *Securities Industry Ass'n v. Board of Governors*, 821 F.2d 810 (D.C. Cir. 1987), *cert. denied*, 56 U.S.L.W. 3459 (1988), for example, SIA made its standard "national significance" argument, but after this Court denied SIA's petition the following report appeared:

> "The Securities Industry Association expressed disappointment last week with the Supreme Court's refusal to hear a case involving National Westminster Bank, but said the importance of the case has diminished since the suit was first filed. The main arena for action on expanded securities powers for banks is now in Congress, where several Glass-Steagall reform bills are pending, SIA said."

"SIA Downplays Supreme Court's Refusal to Hear NatWest Case," *Securities Week*, Jan. 18, 1988 at 11.

[4] By its terms, Section 16, 12 U.S.C. § 24 (Seventh), governs the activities of national banks. Section 5(c) of the Banking Act of 1933 extends the provisions of Section 16 to state-chartered banks that are members of the Federal Reserve System ("member banks"). *See id.* at § 335. Section 21, *id.* at § 378, effectively extends the provisions of Section 16 to state-chartered banks that are not member banks.

markets serves the public interest and because Congress concluded that the underwriting of these governmental securities poses no significant threat to the interests of depositors or the stability of banks. *See Securities Industry Ass'n v. Board of Governors*, 468 U.S. 137, 157 (1984) (*"Bankers Trust I"*).

Section 20 of Glass-Steagall complements the restrictions imposed by Sections 16 and 21 by limiting the securities activities of bank affiliates (in this case, companies owned by companies that also own a bank). While Sections 16 and 21 prohibit banks from underwriting "bank-ineligible" securities *to any extent whatsoever*, Section 20 prohibits bank affiliates only from being *"engaged principally"* in such underwriting.[5] As this Court has recognized, the "engaged principally" standard is less stringent than the standard that applies to banks, and permits bank affiliates to engage in securities "activities that would be impermissible for the bank itself." *Board of Governors v. Investment Co. Inst.*, 450 U.S. 46, 64 (1981) ("ICI *II*").

In interpreting Section 20, the Board has consistently authorized bank affiliates to engage without limitation in the underwriting of bank-eligible securities.[6] In 1984

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[5] Section 20, 12 U.S.C. § 377, prohibits affiliations between member banks and firms that are "engaged principally" in the "issue, flotation, underwriting, public sale, or distribution" of "stocks, bonds, debentures, notes, or other securities." For convenience, these activities are referred to herein as "underwriting." Each of the bank holding companies involved in this case owns at least one member bank.

[6] The Board issued its first such authorization in 1978, and has issued numerous authorizations since then. *See Manufacturers Hanover Corp.*, 70 Fed. Res. Bull. 661 (1984); *Orbanco Financial Services Corp.*, 69 Fed. Res. Bull. 465 (1983); *Citicorp*, 68 Fed. Res. Bull. 249 (1982); *United Oklahoma Bankshares, Inc.*, 65 Fed. Res. Bull. 363 (1979); *Stepp, Inc.*, 64 Fed. Res. Bull. 223 (1978); *United Bancorp*, 64 Fed. Res. Bull. 222 (1978). In its decision below, the Board reiterated that these authorizations were based

the Board unanimously adopted a regulation specifically adding bank-eligible securities underwriting to its "laundry list" of permissible activities for nonbank subsidiaries of bank holding companies.[7] That regulation was adopted without challenge from SIA or anyone else.

The Applications In This Case. Beginning in 1985, each of the bank holding companies sought Board approval under the Bank Holding Company Act, 12 U.S.C. § 1841 *et seq.*, for one of its wholly-owned nonbank subsidiaries to engage generally in underwriting bank-eligible securities and, to a limited extent, in underwriting certain bank-ineligible securities, including commercial paper and certain municipal revenue bonds.[8] To assure compliance with Section 20 of Glass-Steagall, each of the bank holding companies proposed to limit the bank-ineligible securities underwriting activities of its subsidiary so that the subsidiary would not be "engaged principally" in such activities.

The Board's Decision. The Board reviewed the bank holding companies' applications for more than two years, solicited public comments, and conducted a public hearing.[9] On April 30, 1987, the Board issued a detailed 120-page order approving the applications.

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on its legal conclusion that bank-eligible securities underwriting "is not the type of activity prohibited by section 20 . . . of the Glass-Steagall Act." Pet. App. 69a.

[7] *See* 48 Fed. Reg. 23520, 23530-32 (May 25, 1983) (notice of rulemaking); 49 Fed. Reg. 794, 816, 826-28 (Jan. 5, 1984) (final rule) (codified at 12 C.F.R. § 225.25(b)(16)).

[8] Some of the bank holding companies had previously obtained Board approval to establish wholly-owned nonbank subsidiaries to underwrite bank-eligible securities. *See, e.g., Citicorp*, 68 Fed. Res. Bull. 249 (1982).

[9] The record before the Board shows that the bank holding companies' applications were triggered by dramatic changes in the financial services marketplace in recent years. Traditional banking activities such as making short-term loans and underwriting municipal general obligation bonds have been replaced to a significant

The Board considered and rejected all the arguments advanced by SIA. First, the Board rejected SIA's contention that Section 20 limits the extent to which a bank affiliate may underwrite bank-eligible securities. Based on a detailed examination of its prior interpretations of Section 20 and of the language, structure and legislative history of the Glass-Steagall Act, the Board reaffirmed its long-standing conclusion that Section 20 does not restrict a bank affiliate's underwriting of bank-eligible securities.

The Board also rejected a second, and distinct, Glass-Steagall argument advanced by SIA. SIA contended that the bank affiliates would be "engaged principally" in underwriting bank-ineligible securities if such underwriting was a "regular" activity of the affiliates, even if it accounted for only a small part of their business. Based on long-standing interpretations of the phrase "engaged principally" and related language in the Glass-Steagall Act, the Board rejected SIA's contention and concluded that a "bank affiliate may underwrite and deal in [bank-ineligible securities], provided that this line of business does not constitute a principal or substantial activity for the affiliate." Pet. App. 59a. In this connection, the Board restricted each affiliate's gross revenues from underwriting and dealing in bank-ineligible securities to a maximum of 5% of the affiliate's total gross revenues. Pet. App. 84a-85a.[10]

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degree by activities in which banks themselves may not engage, such as underwriting commercial paper and municipal revenue bonds. *See, e.g.*, Board of Governors of the Federal Reserve System, *Flow of Funds Accounts* (Sept. 1986); *Profitability of Insured Commercial Banks in 1984*, 71 Fed. Res. Bull. 836, 848 (1985). This surge in the "securitization" of traditional banking services led the bank holding companies to seek Board approval to engage in the limited bank-ineligible securities underwriting permitted by Section 20.

[10] The Board stated that it would review this restriction within one year "to assess whether somewhat higher levels of activity up to 10 percent may be permissible consistent with [its] interpreta-

Finally, the Board determined that limited underwriting of bank-ineligible securities is also permissible under Section 4(c)(8) of the Bank Holding Company Act, 12 U.S.C. § 1843(c)(8).[11] The Board found that this activity is "a natural extension of activities currently conducted by banks, involving little additional risk or new conflicts of interest." Pet. App. 89a. It also concluded that the "introduction of new competitors into these markets may be expected to reduce concentration levels and, correspondingly, to reduce financing costs, underwriting spreads, and increase the availability of services to issuers." Pet. App. 96a. The Board imposed numerous limitations on the conduct of the approved activities in order "to assure that the [activities] will not produce significant conflicts of interest, unsound banking practices, unfair or decreased competition, undue concentration of resources or other adverse effects." Pet. App. 73a (footnote omitted); *see also* Pet. App. 128a-134a. The Board's determinations under the Bank Holding Company Act were not disputed before the Court of Appeals and are not challenged in SIA's petition for certiorari.

The Court of Appeals' Decision. On February 8, 1988, the United States Court of Appeals for the Second Circuit unanimously rejected SIA's challenge to the Board's

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tion of the term engaged principally as encompassing any activity that is substantial." Pet. App. 84a-85a.

[11] Section 4(c)(8) requires a bank holding company to obtain the approval of the Board prior to acquiring, establishing, or expanding the activities of a nonbank subsidiary. As a predicate to granting such approval, the Board must determine that the activities to be conducted by the nonbank subsidiary are "so closely related to banking . . . as to be a proper incident thereto." The "proper incident" test requires the Board to "consider whether [the performance of the proposed activities] by an affiliate of a holding company can reasonably be expected to produce benefits to the public . . . that outweigh possible adverse effects . . . ." 12 U.S.C. § 1843(c)(8).

decision. The Court of Appeals held that Section 20 does not "preclude a bank affiliate from engaging in the same activities to the same extent as a member bank" and upheld the Board's determination that "the reference in § 20 to 'securities' does not encompass those securities which § 16 allows banks themselves to underwrite." Pet. App. 36a-37a. The Court of Appeals also unanimously rejected SIA's contention that the government securities subsidiaries would violate the "engaged principally" standard by deriving 5% of their business from bank-ineligible underwriting. Pet. App. 43a-45a.

REASONS FOR DENYING THE WRIT

I. THE DECISIONS BELOW RAISE NO IMPORTANT QUESTION OF LAW WARRANTING THIS COURT'S REVIEW

The Board is the agency charged by Congress with the task of determining whether bank affiliates may conduct the securities activities at issue here. After extensive deliberation, the Board concluded that these activities do not infringe, and are indeed consistent with, the language, structure and legislative history of the Glass-Steagall Act. The Court of Appeals has agreed with the Board and no other court has taken a contrary position.

The decisions below simply confirm the decade-old rule that Section 20 of Glass-Steagall does not limit the extent to which a bank affiliate may underwrite bank-eligible securities. As the Board and the Court of Appeals determined, SIA's contrary interpretation of Section 20 improperly divorces the words of the statute from their context and disregards the structure and legislative history of the Act. To suggest, as SIA does, that Glass-Steagall permits the underwriting of government securities in a bank *department*, but restricts the underwriting of such securities in a bank *affiliate*, defies common sense and is flatly inconsistent with congressional intent and this Court's precedents. Indeed, this Court has held

that Section 20 reflects an express congressional decision to permit a bank affiliate to engage in securities "activities that would be impermissible for the bank itself." *ICI II*, 450 U.S. at 64.

SIA also half-heartedly advances the argument that Section 20 bars a bank affiliate from deriving even a limited percentage of its total business from underwriting bank-ineligible securities. That meritless argument was rejected unanimously by both the Board and the Court of Appeals. This Court has already held that the "engaged principally" standard in Section 20 establishes a "significantly less stringent test for determining the permissibility of securities-related activity [conducted by bank affiliates] than does the word 'engaged,' contained in [the sections of the Act] applicable to banks." *Id.* at 71 n.46. In the face of this authority, SIA's contention that a bank affiliate is "engaged principally" in activities covered by Section 20 even if those activities account for less than 5% of its total business is simply untenable. SIA itself implicitly acknowledges the weakness of its position by devoting only a few lines of its legal analysis to this question.[12]

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[12] SIA tries to infuse significance into this case by raising the spectre of affiliations between member banks and the largest investment banks in the country. This is completely irrelevant to the decisions below, which approve only a small amount of bank-ineligible underwriting through *de novo* nonbank subsidiaries. Moreover, any transaction producing an affiliation between a bank and an investment bank would be subject to the Board's prior approval under Section 4(c)(8) of the Bank Holding Company Act. The Board would have to determine that each and every activity in which the investment bank was engaged was "closely related to banking" and that the proposed transaction satisfied the "net public benefits" test under Section 4(c)(8). In short, it is nonsense for SIA to suggest that the decisions below permit affiliations between commercial banks and the largest investment banks in the country.

Congress is fully aware of the Board's decision. Last year it adopted legislation that suspended the effective date of the Board's decision until March 1, 1988 while new financial services legislation was being considered.[13] Congress has now allowed the moratorium to lapse, thereby eliminating any legislative barrier to the Board's decision taking effect. The proper conclusion to be drawn from these legislative developments is *not* that Congress regards the Board's decision as an invasion of its prerogatives, but that Congress is content to let the Board's decision take effect while it continues to consider new legislation. Indeed, on March 30, 1988, the Senate approved by a vote of 94-2 legislation that would *repeal* Section 20 of Glass-Steagall and permit bank affiliates to engage *without limitation* in underwriting *all* bank-ineligible securities except corporate stock.[14]

II. THE DECISIONS BELOW ARE PLAINLY CORRECT AND FULLY CONSISTENT WITH THIS COURT'S PRECEDENTS

A. Section 20 Does Not Restrict a Bank Affiliate's Underwriting of Bank-Eligible Securities

Section 20 prohibits affiliations between member banks and firms engaged principally in the underwriting of "stocks, bonds, debentures, notes, or other securities." Because the Glass-Steagall Act does not define these terms, the Board and the Court of Appeals employed the traditional methods of statutory construction to determine their meaning. Based on an exhaustive review of the language, structure and legislative history of the Act, the Board and the Court of Appeals confirmed the decade-old determination that Section 20 does not limit

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[13] Competitive Equality Banking Act of 1987, Pub. L. No. 100-86, §§ 201(b)(2)(A), 203.

[14] *See* 134 Cong. Rec. S3437 (daily ed. March 30, 1988). The Senate bill requires Congress to vote on or before April 1, 1991 on whether to permit bank affiliates to underwrite corporate stock. *See* S. Rep. No. 305, 100th Cong., 2d Sess. at 73 (1988).

the extent to which a bank affiliate may underwrite bank-eligible securities. Both the Board and the Court of Appeals were unanimous on this point.[15]

This ruling is straightforward and plainly correct. Glass-Steagall restricts banks' underwriting activities in order to protect banks and their depositors from risks Congress perceived to be associated with banks' involvement in certain securities activities.[16] But the Act expressly permits banks to underwrite bank-eligible securities. If, as Congress decided, underwriting bank-eligible securities is safe enough to be permissible for a bank itself, it must be equally permissible for a bank affiliate, since the only reason Congress restricted the activities of bank affiliates was to provide additional protection for banks.[17]

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[15] The two dissenters from the Board's decision (former Chairman Volcker and Governor Angell) expressly stated that they supported "earlier Board decisions allowing the underwriting and dealing of [bank-eligible] securities to take place in an affiliate." Pet. App. at 127a n.2. The dissent was based on an entirely different theory, which not even SIA embraces or defends. The dissenters argued that if a bank affiliate underwrites even a small amount of bank-ineligible securities, its otherwise permissible bank-eligible underwriting is somehow transformed into an activity limited by Section 20. Pet. App. 136a-137a. The dissenters offered no legal analysis or authority to support their position.

[16] *See, e.g., ICI II*, 450 U.S. at 53 ("Congress placed restrictions on the securities-related business of banks in order to protect their depositors").

[17] As the Court of Appeals stated: "Because underwriting and dealing in [bank-eligible] securities pose no hazards to banks themselves, *a fortiori* bank affiliates should be able principally to engage in the same activity." Pet. App. 36a. *See Securities Industry Ass'n v. Board of Governors*, 468 U.S. 207, 221 (1984) (*"Schwab"*) ("[T]he fact that § 16 . . . allows banks to engage directly in [an activity] suggests that the activity was not the sort that concerned Congress in its effort to secure the Nation's banks from the risks of the securities market").

SIA has tried to argue that Section 20 imposes a more restrictive standard on the securities activities of bank affiliates than on those of banks themselves. But that makes no sense, and this Court has already held that bank affiliates can engage in securities "activities that would be impermissible for the bank itself." *ICI II*, 450 U.S. at 64. Thus, as the Justice Department advised the Board in its comments during the administrative process, SIA's contention that bank affiliates are more constrained in their securities activities than banks themselves "stands the statutory scheme on its head." [18]

The legislative history confirms that the Act was not intended to limit the extent to which a bank affiliate may underwrite bank-eligible securities:

> "Mr. LONG. I have been told that the Senator has said that he did not think this bill would prohibit the handling of Government and State bonds by the . . . banks, *that the Senator's provision against affiliates handling bonds was not intended to affect the handling of Government and State bonds.*
>
> MR. GLASS. They are expressly excluded from the terms of the bill." [19]

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[18] Department of Justice Comments, Appendix B hereto at 12a n.23. *See also* Pet. App. 35a (Court of Appeals) ("Since banks are allowed under § 16 to underwrite and deal in government obligations without limitation, it would be incongruous for § 20 to prohibit banks from affiliating with entities that are merely 'engaged principally' in those same activities"); Comptroller of the Currency Comments, Appendix C hereto.

[19] 76 Cong. Rec. 2000 (1933) (emphasis added). SIA argued that other parts of the exchange between Senator Long and Senator Glass supported its position, but the Court of Appeals expressly rejected that contention:

> "Senator Glass' response to Senator Long indicates that he was primarily concerned with 'back door' arrangements between banks and their security affiliates that permitted affiliates to engage in the securities business denied by law to the bank itself. Senator Glass' reservation did not encompass affiliate

Based on this and other evidence in the legislative history, the Court of Appeals concluded that "Congress' concern was primarily with bank affiliate activities in bank-ineligible securities." Pet. App. 30a. Congress did not intend to, and did not, restrict a bank affiliate's underwriting of governmental securities.

Further confirmation of this understanding is provided by Congress' clarification in 1935 of the meaning of the phrase "stocks, bonds, debentures, notes, or other securities." This phrase appears in *both* Section 21 of Glass-Steagall, which applies to banks, and in Section 20, which applies to bank affiliates. After Glass-Steagall was adopted in 1933, some questions arose about the meaning of this phrase in Section 21, which unlike Section 20 was a criminal statute.[20] Accordingly, in 1935 Congress added a proviso to Section 21 to make it absolutely clear that bank-eligible securities were not encompassed by the phrase "stocks, bonds, debentures, notes, or other securities." The identical phrase in Section 20 necessarily has always had the same meaning.[21]

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activity in a business that § 16 grants to a bank 'the privilege of doing.' "

Pet. App. at 29a. Although Senator Glass objected generally to bank affiliates, Congress did not adopt his view that they should be abolished.

[20] The Board took the position that it would not provide authoritative interpretations of Section 21 because it was a criminal provision. *See, e.g.*, 20 Fed. Res. Bull. 542, 543-44 (1934).

[21] The 1935 amendment added new language to Section 21 that was not included in Section 20. But in both the Senate and House reports Congress made it clear that the proviso to Section 21 was added not to *change* what Section 21 meant, but to *clarify* what the phrase "stocks, bonds, debentures, notes, or other securities" had meant all along. S. Rep. No. 1260, 73d Cong., 2d Sess. 2 (1934); S. Rep. No. 1007, 74th Cong., 1st Sess. 15 (1935); H.R. Rep. No. 742, 74th Cong., 1st Sess. 16 (1935). Both the Second Circuit below, and the D.C. Circuit in an earlier decision, have unani-

SIA's attack on the Board's and the Court of Appeals' construction of Section 20 relies mainly on *Bankers Trust I* and *Board of Governors v. Dimension Financial Corp.*, 474 U.S. 361 (1986) (*"Dimension"*). To the extent that *Bankers Trust I* and *Dimension* are pertinent, they support the decisions below.[22] Indeed, in *Bankers Trust I*, this Court specifically stated that Congress' concern about a bank's establishing a "securities operation" did not extend to "governmental obligations that Congress specifically has chosen to favor." 468 U.S. at 158. Moreover, this Court's analysis in both cases confirms that the Board and the Court of Appeals correctly examined the structure and legislative history of Glass-Steagall as well as the specific statutory terms in determining what Congress had intended. In fact, in every Glass-Steagall case this Court has decided, it has thoroughly examined the structure and legislative history of the Act, just as the Board and the Court of Appeals did here.[23]

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mously confirmed that the 1935 amendment merely clarified the statutory phrase and did not change its meaning in any way. *See* Pet. App. 33a; *Securities Industry Ass'n* v. *Board of Governors*, 807 F.2d 1052, 1058 (D.C. Cir. 1986), *cert. denied*, 107 S. Ct. 3228 (1987) (*"Bankers Trust II"*) (holding that Congress' 1935 amendment to Section 21 "sought merely to *clarify*" the statute and that the statutory language "necessarily" had the same meaning both before and after the amendment) (emphasis in original).

[22] *Bankers Trust I* simply held that a certain form of corporate debt (commercial paper) is a "security" that Glass-Steagall bars *banks* from underwriting; it provides no support for SIA's contention that a bank affiliate's ability to underwrite bank-eligible securities is more limited than that of a bank. *Dimension* involved the definitional sections of the Bank Holding Company Act.

[23] *See Schwab*, 468 U.S. at 214-21; *Bankers Trust I*, 468 U.S. at 142-60; *ICI II*, 450 U.S. at 61-68; *Investment Co. Inst. v. Camp*, 401 U.S. 617, 623-39 (1971); *Board of Governors v. Agnew*, 329 U.S. 441, 447-49 (1947).

Finally, SIA relies on the Board's interpretation of Section 32 of the Glass-Steagall Act, a provision not at issue in this case that prohibits personnel interlocks between member banks and firms that are "primarily engaged" in securities underwriting. SIA suggests that because the Board created an exemption under Section 32 for firms engaged in bank-eligible underwriting, the Board must have thought that this activity was covered by Section 20. Pet. 21-23. But the Board has long adhered to the "view that the conduct of [bank-eligible underwriting] by member bank affiliates is not the type of activity prohibited by *section 20 or 32* of the Glass-Steagall Act." Pet. App. 69a (emphasis added).[24] In light of the Board's clear position on this issue, the fact that the Board has taken a "belt and suspenders" approach by also relying on its exemptive authority under Section 32 is irrelevant.[25]

In short, SIA's attack on the rulings below is undermined not only by the weakness of its specific arguments,

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[24] The Board's own regulatory handbook explains that Section 32 does not apply to organizations "involved only in 'government' securities transactions." Federal Reserve Regulatory Service 3-866.

[25] The courts have recognized that bank regulators frequently took an unnecessarily cautious approach to Glass-Steagall issues immediately after the Act's adoption. *See New York Stock Exchange* v. *Smith*, 404 F. Supp. 1091, 1097 (D.D.C. 1975), *vacated on other grounds sub nom. New York Stock Exchange* v. *Bloom*, 562 F.2d 736 (D.C. Cir. 1977), *cert. denied sub nom. New York Stock Exchange v. Heimann*, 435 U.S. 942 (1978) (accepting Comptroller's position that early construction of Glass-Steagall embodied "an overcautious approach to bank regulation reflecting the atmosphere of the years immediately after the 1929 market crash" rather than the legislative history of the Act). *Accord Securities Industry Ass'n* v. *Comptroller of Currency*, 577 F. Supp. 252, 255 (D.D.C. 1983), *aff'd*, 758 F.2d 739 (D.C. Cir. 1985), *cert. denied*, 474 U.S. 1054 (1986) (rejecting SIA's reliance on early Comptroller opinions restrictively interpreting Section 16 that were subsequently repudiated by the Comptroller).

but also by its failure to offer *any* plausible explanation of why Congress would have imposed more severe restrictions on the governmental securities activities of bank affiliates than it imposed on those of banks themselves.

B. Section 20 Permits a Bank Affiliate to Derive a Limited Percentage of Its Total Business from Underwriting Bank-Ineligible Securities

SIA makes a passing suggestion in its petition that a bank affiliate is "engaged principally" in underwriting bank-ineligible securities even if that activity accounts for less than 5% of the affiliate's business. That contention was rejected in the decisions below as patently inconsistent with this Court's precedents and with the language, structure and legislative history of the Glass-Steagall Act.

This Court decided in *ICI II* that the "engaged principally" standard in Section 20 establishes a "significantly less stringent test for determining the permissibility of securities-related activity than does the word 'engaged,' contained [in the sections of the Act] applicable to banks." 450 U.S. at 71 n.46. As the Court of Appeals concluded, Congress' decision to employ the "engaged principally" standard was deliberately made with full knowledge that it would permit bank affiliates to engage in some considerable amount of bank-ineligible securities activities.[26] Against this background, the Board and the

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[26] Pet. App. 27a. The Court of Appeals noted that Senator Bulkley, "one of the leading advocates of Glass-Steagall," was well aware that the word "engaged" connoted a stricter standard than the words "engaged principally": he successfully offered an amendment to delete the word "principally" from Section 21 (which applies to banks) because he feared it would allow banks to engage to a substantial extent in bank-ineligible activities. In this light, the Court of Appeals concluded that "it is inconceivable that [the word 'principally'] could remain in § 20 by sheer happenstance." *Id.*

Court of Appeals were compelled to reject SIA's contention that a bank affiliate is "engaged principally" in any activity in which it engages "regularly" even if the activity accounts for less than 5% of the affiliate's business.[27]

SIA argues that the rulings below are inconsistent with Congress' intention to abolish the "security affiliates" of commercial banks and that they create a "loophole" in the Glass-Steagall Act. Pet. 23. In fact, as the Senate committee report accompanying the Glass-Steagall Act explained, Congress expressly *rejected* proposals to abolish security affiliates. Instead, Congress chose to separate security affiliates "as far as possible" from member banks, to restrict credit transactions between banks and their affiliates, and to provide for the examination of affiliates.[28] In light of these safeguards, Congress chose to permit bank affiliates to engage in securities "activities that would be impermissible for the bank itself," *ICI II*, 450 U.S. at 64, so long as the affiliate is not "engaged principally" in those activities. As the Board explained, this limitation assures that bank affiliates cannot become "the type of general securities underwriting affiliates Congress intended to divorce from member banks in 1933." Pet. App. 72a.

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[27] The question presented by SIA's petition is whether the Board and the Court of Appeals properly rejected SIA's extremely restrictive interpretation of the "engaged principally" standard. The Board's interpretation of "engaged principally" is, in fact, very conservative, but the question of the outer limits of the standard is not before the Court.

[28] S. Rep. No. 77, 73d Cong., 1st Sess. at 10 (1933). Based on this and other evidence in the legislative history, the Court of Appeals concluded that "while the original impetus behind the Glass-Steagall bill . . . may have been to sever completely the commercial and investment banking industries, it fell short of that goal—a victim of legislative compromise." Pet. App. 27a.

SIA's final contention is that "the court of appeals allowed the Board again 'effectively [to] convert a portion of the [Glass-Steagall] Act's broad prohibition into a system of administrative regulation' . . ." Pet. at 24 (quoting *Bankers Trust I*, 468 U.S. at 153). This argument badly distorts the decisions below. The Board imposed prudential limitations on the activities of the bank affiliates pursuant to Section 4(c)(8) of the Bank Holding Company Act, 12 U.S.C. § 1843(c)(8). These restrictions are not based on the Glass-Steagall Act at all. Pet. App. 73a. Indeed, the Board specifically noted that the limitations and conditions in its orders relating to lending arrangements, sharing of office space and the like went "further than Congress under the Glass-Steagall Act." *Id.* SIA has not challenged the Board's authority to impose these limitations under the Bank Holding Company Act.

CONCLUSION

For all of the foregoing reasons, the petition for a writ of certiorari should be denied.

Respectfully submitted,

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Dated: May 13, 1988

APPENDICES

APPENDIX A

Pursuant to Rule 28.1 of this Court, the subsidiaries (except wholly-owned subsidiaries) and affiliates * of each of the respondent bank holding companies are identified below. None of the respondent bank holding companies has a parent corporation.

Bankers Trust New York Corporation:

Subsidiaries and Affiliates:

Sumgin Bankers Investment
BT Asia Securities Limited
Banco Iochpe de Investimento
IM Trust & Co.
PT Bankers Trust Lippo Leasing
Turk Merchant Bank A.S.
BT Brokerage & Associates Pte. Ltd.
Provide
Thai Investment & Securities Co. Ltd.

J.P. Morgan & Co. Incorporated:

Subsidiaries and Affiliates:

J. P. Morgan Securities Asia Ltd.

Citicorp:

Subsidiaries and Affiliates:

Administradora de Consorcios Crefisul Ltda.
Advanced Technical Systems Limited
Agence Touristique de Guyenne et Gascogne S.A.
Ambac Inc.
Apetik-Refeicoes Convenio Ltda.
Aportes y Suministros S.A.
Argos Companhia de Seguros
Arrendadora Inci, S.A. de C.V.

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* For this purpose, a "subsidiary" or an "affiliate" is a company more than 25% of the voting securities of which are owned by a respondent bank holding company.

Arrendadora y Administradora Citycol S.A.
Auximar Voyages S.A.
Banco Crefisul de Investimento S.A.
Banco de Honduras S.A.
Banco Internacional de Colombia (Nassau) Limited
Banco Internacional de Colombia, S.A.
Bay Forest Lot 20
Boerum Court Associates
Brickell Biscayne Associates
BT Publications, Inc.
Bytex Holdings Limited
C.R.P.-Representacoes, Comercio e Participacoes Ltda.
Camelot Partnership
Cardholder Services Limited
Central Holdings Corporation
CFM Incorporated
Channel Collections Limited
Citi-Alexis Partnership Limited
Citi-Fairway Partnership Limited
Citi-Little Partnership Limited
Citi-Renaissance Partnership Limited
Citi-Reserve, Societe D'Investissement a Capital Variable
Citibank (Zaire) S.A.R.L.
Citibank Budapest RT
Citibank Espana S.A.
Citibank Financial Consultants Limited
Citibank Italia S.p.A.
Citibank-Maghreb
Citicorp y Rio—Banco de Inversion, S.A.
Citifin Espana, S.A. de Financiacion
Citifinance Limited
Citilease Internacional, S.A.
Citilease Syndication No. 1 Corp.
Citilife S.A.N.V.
Citytrust Banking Corporation
Citytrust Finance Corporation

Citytrust Insurance Brokers Corporation
Citytrust Investment Philippines, Inc.
Clarke Vickers (UK) Limited
CNR Partners
Collateral Trust Corporation Limited
Cominter, Groupement d'Interet Economique Regi
Par L'Ordonnance du 23
Compagnie Franco-Americaine de Gestion Financiere
Compagnie Generale de Banque Citibank
Compania Colombiana de Financiamiento
Comercial S.A.
Compania Exportadora Cityexport S.A.
Credicard S.A.—Administradora de
Cartoes de Credito
Crefidata S.A.—Processamento de Dados
Crefisul—Arrendamento Mercantil S.A.
Crefisul—Corretora de Seguros Ltda.
Crefisul—Previdencia Privada S.A.
Crefisul Comercio e Exportacao Ltda.
Crefisul Commodities Ltda.
Crefisul Distribuidora de Titulos e
Valores Mobiliarios S.A.
Crefisul Empreendimentos Imobiliarios S.A.
Crefisul S.A.—Credito, Financiamento
e Investimentos
Crefisul—Promotora de Vendas Ltda.
D.C. The Credit Managing & Marketing Co., Ltd.
D.C.F. Services Limited
Dalgety Rural Finance Limited
Datatype International Limited
DCF Holding S.A.
DHC Corporation
Diners Assurances S.A.R.L.
Diners Club de France S.A.
Diners Club du Maroc
Diners Club Israel Limited
Diners Club Limited (Australia)
Diners Club Limited, The (England)
Diners Club Limited, The (Ireland)

Diners Club of Japan, Inc., The
Diners Selection S.A.R.L.
Diners Voyages S.A.
Diners World Travel Limited
Diners World Travel Ltd.—Greece
Diners World Travel Pty. Limited
DKM Consultants Limited
DNC Agency, Inc.
Dorchester on Rittenhouse Square Partners, The
Eagle II
Elogica Gesellschaft fur Elektronik in Der Datenubertragung M.b.H.
Empresa de Colaboraciones Comerciales, S.A.
European Industrial Services Limited
Famibank S.A.
Financia Nederland N.V.
Finders Limited
First Citicorp Leasing, Inc.
First Interlaken Corp.
First National Nippon Shinpan Co., Ltd.
Fraser Vickers Research Pte. Limited
Garfield Restoration, The
Getco S.A.R.L.
Giftworld Holdings Limited
GKB Gerwerbekreditbank AG
GKB Leasing GmbH
Goldsboro Joint Venture
Greater Southwest Community Service Corp.
Harrison Credit Group, Inc.
HCG Services, Inc.
Heidelberger Inkasso Bappert KG
Industrias Reliance, S.A. de C.V.
Informacao e Technologia S.A.
Inmobiliaria Jiennense, S.A.
Integrated Ceramic Components Limited
Inversiones en Financiamiento S.A.
Island Finance Corporation
J & E Davy

J & E Davy Holdings Limited
J.J. Finance Pty. Limited
J.N. Travers & Co. Limited
KKB Bank AG
KKB Finanzberatung GmbH
KKB Lebensversicherung AG
Lake Terrace Associates
Leasecontracts P.L.C.
Lenox Mexicana, S.A. de C.V.
Lensfield Products Limited
Lexington Commons, The
Lexington Village, The
Maghreb Finance S.A.
Mandata GmbH fur Rechtsbesorgung und Inkasso
Managers Holdings Limited
Marine Partners
Memo Services S.A.R.L.
Meridia Finanziaria S.P.A.
Meridia Leasing S.P.A.
Meridian Partnership Ltd.
Mission Park Corporation
Negofia Investissements S.A.
Newnet S.A.
Nigeria International Bank, Limited
Norper Investments Pty. Limited
Ogisec S.A.R.L.
Olive Trees Venture
One Sansome Street Associates
P.T. Citicorp Leasing Indonesia
Paddle Creek Enterprises, Inc.
Papago Ridge Joint Venture
Partridge Hill Company
Planlife Advisory Services Limited
PPLA Plaza, A Limited Partnership
Provequim, S.A. de C.V.
Revue Signature S.A.
Riba—Representacoes Participacoes e Administracao Ltda.

Rochford Thompson Group Limited
S.N.—Crefisul S.A.—Distribuidora de Titulos e Valores Mobiliarios
S.N.—Crefisul S.A.—Sociedade Corretora
Sansome Land Associates
Saudi American Bank
Schuyler Associates
SCI Buc Les Yvelines
SCI Sainte Madeleine I
SCI Sainte Madeleine II
SCI 101-103 Boulevard Pereire
Scrimgeour Vickers Financial Services Limited
Serfia S.A.
Sita World Travel (London) Limited
Sobelfac S.A.
Spar-und Kreditbank Registrierte Genossenschaft MbH
Spectrum Itex Limited
Sperry New Holland Credit Corporation
Storecard Limited
Sulina-Participacoes e Servicos Ltda.
Sur Seguros de Retiro y Vida S.A.
Taiwan First Investment and Trust Co., Ltd.
Texas AP Inc.
Tiers of Laurel Lakes Limited Partnership, The
Tintawn Carpets Limited
Tupuna Unit Trust, The
United Bank of Trinidad and Tobago Limited, The
United News Shops Holdings Limited
Veda Credit & Travel Services Ltd.
Wattana Associates Company Limited
808 Broadway Associates

The Chase Manhattan Corporation:

Subsidiaries and Affiliates:

3405 Greenway Associates
3507 N. Charles Street Associates
Banco Chase Manhattan, S.A.

Calvert Executive Plaza, Ltd.
Chase AMP Acceptances Ltd.
Chase AMP Bank Ltd.
Chase AMP Capital Markets Ltd.
Chase AMP Futures Ltd.
Chase AMP Nominees Ltd.
Chase AMP Properties Ltd.
Chase Bank Cameroon, S.A.
Chase Banque de Commerce
Chase Gestoni S.P.A.
Chase Manhattan Bank Espana, S.A.
Chase Manhattan Leasing, S.A.
Chase Manhattan S.A. Credito Financiamento Investimento LMS Imoveis Limitada
Chase Manhattan S.A. Distribuidora de Titulos e Valores Mobiliarios
Chase Manhattan Securities (C.I.) Ltd.
Couingwood Limited
Delmarva Sand & Gravel Company
Fabrica Nacional de Sacos, S.A.
First Victoria Limited Partnership
GK Company
Global Trading International Corporation
H.A. Limited Partnership
Hanover Manor Associates
Harbour Bay Joint Venture
Jhetta Limited Partnership
Keri Limited Partnership
Northgate Limited Partnership
O & C Contractors, Inc.
Octogonal Empreendimentos Ltda.
P.T. Chase Leasing Indonesia
Polisac, S.A.
Sebastian Associates
Sebastian Lakes Associates
SPH Associates
Ten Thousand Three Hundred Fifty (10350) Wilshire Boulevard, Inc.

The Woodlands Commercial Center, Ltd.
Wilmington International Corporation

Manufacturers Hanover Corporation:

Subsidiaries and Affiliates:

Manufacturers Hanover Leasing S.p.A.
Manufacturers Hanover Asia Limited
Manufacturers Hanover U.K. Holdings Limited
Manufacturers Hanover Cellular Services Ltd.
Manufacturers Hanover Leasing S.p.A.
Manufacturers Hanover Central Leasing Corporation
Anglo-Yugoslav Bank Limited
Manufacturers Hanover Leasing Corporation Y Compania Limitada
Arrendadora Bancomer, S.A. de C.V.
Manufacturers Hanover de Arrendamiento Financiero S.A.
Korea Industrial Leasing Co., Ltd.
Manufacturers Hanover Central Leasing Corporation
MH World Trade Corporation Mexico

Chemical New York Corporation:

Subsidiaries and Affiliates:

Chemical Bank of Canada
Chemco Canada Leasing, Inc.
Chemical Community Development, Inc.
Chemical International Bank
Chemical International Finance, Ltd.
Chemco International Leasing Inc.
Chemical Videotex Services, Inc.
Chemgraphics Systems, Inc.
ChemLease Worldwide, Inc.
ChemNetwork Processing Services, Inc.
Chem Credit, Inc.
Chemco International, Inc.

Security Pacific Corporation:

Subsidiaries and Affiliates:

Bussan SecPac, Ltd.
Caixa Leasing S.A.
China International Finance Ltd.
Gwynvett European Securities, Ltd.
Hoare Candover Ltd.
Hoare Govatt (Channel Islands) Ltd.
— Hoare Govett Services (Guernsey) Ltd.
— Hoare Govett Services (Jersey) Ltd.
— Tremac Nominees (Guernsey) Ltd.
— Tremac Nominees (Jersey) Ltd.
Hoare Govett Summit Securities (Ptc) Ltd.
Hoare Octogon Ltd.
Hong Kong & Shanghai Insurance Co. Ltd.
McIntosh Securities Ltd.
NDC Securities Ltd.
SPAL Management Ltd.
— International Consultants Ltd.
— SPA Nominees, Ltd.
— SPI Limited
— SPAL Management (Private) Ltd.
— SPAL Management (Retail) Ltd.
Security Pacific (U.K.) Corp.
Security Pacific Bank S.A.
Security Pacific Capital Australia Ltd.
— Security Pacific Finance, Ltd.
— Security Pacific Industrial, Ltd.
— Security Pacific Securities, Ltd.
Security Pacific Leasing, S.A.
Security Pacific Private Capital Asia Ltd.
Sumitrust Security Pacific Investment Managers, Inc.

APPENDIX B

Before the
BOARD OF GOVERNORS OF
THE FEDERAL RESERVE SYSTEM
Washington, D.C. 20551

IN THE MATTERS OF

Docket No. 85-12042

APPLICATION OF CITICORP FOR APPROVAL TO UNDERWRITE AND DEAL IN CERTAIN SECURITIES TO A LIMITED EXTENT

Docket No. 85-23992

APPLICATION OF J.P. MORGAN & CO., INC., FOR APPROVAL TO UNDERWRITE AND DEAL IN CERTAIN SECURITIES TO A LIMITED EXTENT

COMMENTS OF THE UNITED STATES
DEPARTMENT OF JUSTICE

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* * * *

III. THE APPLICATIONS OF CITICORP AND MORGAN ARE CONSISTENT WITH SECTION 20 OF THE GLASS-STEAGALL ACT

A. The Glass-Steagall Act Permits a Bank Affiliate to Underwrite and Deal in Bank-Ineligible Securities Provided that the Affiliate Is Not "Engaged Principally" in Such Underwriting and Dealing.

The Glass-Steagall Act, which governs the relationship between investment and commercial banking, clearly differentiates between banks and their affiliates with respect to the limitation it imposes on their securities activities.

Sections 16 and 21 of Glass-Steagall contain absolute prohibitions against banks directly engaging in all but a few enumerated securities activities.[17] Section 16 provides that national banks and state member banks "shall not underwrite any issue of securities or stock . . ." [18] Similarly, Section 21 states that any firm "*engaged* in the business of issuing, underwriting, selling or distributing [stock] or other securities" shall not "engage at the same time to any extent whatever in the business of receiving deposits." [19] The precise and full prohibitions of Sections 16 and 21 have been interpreted to bar conduct by banks falling within their terms. Thus, in *Securities Industry Ass'n v. Board of Governors*, 104 S. Ct. 2979 (1984), the Supreme Court held that, since commercial paper is a security, a bank could not underwrite commercial paper under the "flat prohibitions" of Sections 16 and 21. *Id.* at 2985.

In contrast, the Glass-Steagall Act does not impose a blanket prohibition on the securities activities of bank affiliates.[20] "[A] bank affiliate may engage in activities that would be impermissible for the bank itself," [21] subject to the limitation found in Section 20 of Glass-Steagall. Section 20 provides in pertinent part:

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[17] Member banks may purchase and sell stock and other securities upon the order and for the account of others. 12 U.S.C. § 24 (Seventh). In addition, member banks are authorized to purchase for their own account certain marketable debt obligations, referred to as "investment securities," pursuant to regulations issued by the Comptroller of the Currency. They are also permitted to underwrite and freely deal in general obligation government securities.

[18] 12 U.S.C. § 24 (Seventh).

[19] 12 U.S.C. § 378 (emphasis added).

[20] Bank holding companies are within the definition of "affiliate" and thus within the permissive ambit of Section 20. 12 U.S.C. § 221a(b)(4).

[21] Board of Governors v. Investment Company Institute, 450 U.S. 46, 64 (1981).

> [N]o [national bank] shall be affiliated . . . with any corporation, association, business trust or other similar organization *engaged principally* in the issue, flotation, underwriting, public sale, or distribution at wholesale or retail or through syndicate participation of stocks, bonds, debentures, notes or other securities.[22]

Thus, as the Supreme Court has stated, while Glass-Steagall "entirely prohibits the same firm from engaging in banking and in the underwriting business, . . . § 20 does not prohibit bank affiliation with a securities firm unless that firm is 'engaged principally' in activities such as underwriting." [23]

* * * *

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[22] 12 U.S.C. § 377 (emphasis added).

[23] Board of Governors v. Investment Company Institute, 450 U.S. at 64.

The Securities Industry Association ("SIA") and Investment Company Institute ("ICI") have argued that Section 20 of Glass-Steagall should be read literally to prohibit a bank's affiliate from being "engaged principally" in the underwriting of any securities, be they eligible or ineligible. Under their contention, a bank affiliate could not limit its activities to underwriting eligible securities, even though such activity would be permitted to the bank itself. SIA Comments Regarding Citicorp Application at 6-9; ICI Comments Regarding Citicorp Application at 12.

This argument, however, is totally at odds with the obvious purpose of the Glass-Steagall Act as well as the Supreme Court's decision in Board of Governors v. Investment Company Institute. According to SIA and ICI, Congress passed Glass-Steagall to force bank holding companies to move securities activities in eligible securities from bank affiliates to the banks. This contention, stands the statutory scheme on its head. There is no question that Congress felt the bank safety and conflicts of interest risks created by allowing banks to engage in securities activities were greater than the risks created by allowing such activities in bank affiliates. Consequently, as the Supreme Court stated in Board of Governors v. Investment Company Institute, the Glass-Steagall Act provides that "a bank affiliate may engage in activities that would be impermissible for the bank itself," rather than vice versa. See Note 21, *supra*.

APPENDIX C

COMPTROLLER OF THE CURRENCY
ADMINISTRATOR OF NATIONAL BANKS

Washington, D.C. 20219

January 30, 1987

Mr. William W. Wiles, Secretary
Board of Governors of the Federal Reserve System
20th Street and Constitution Avenue, N.W.
Washington, D.C. 20551

Re: Hearing before the Board of Governors of the Federal Reserve System ("Board") on the Applications of Citicorp, J. P. Morgan & Co., Incorporated, and Bankers Trust New York Corporation to underwrite and deal in commercial paper, mortgage-related securities, municipal revenue bonds and consumer-receivable related securities pursuant to the Bank Holding Company Act of 1956, as amended

Dear Mr. Wiles:

The Office of the Comptroller of the Currency ("Office") has reviewed the Board's December 31, 1986 Order for Hearing Before the Board ("Order for Hearing"), convening a February 3, 1987 hearing on the above-referenced Applications. The applicants have requested Board approval under Section 4(c)(8) of the Bank Holding Company Act, 12 U.S.C. § 1843(c)(8), and Section 225.21(a) of the Board's Regulation Y, 12 C.F.R. § 225.21(a), to engage in "underwriting" and "dealing in" the above-listed instruments through wholly-owned nonbanking subsidiaries. The Board has stated that because each of the proposed underwriting subsidiaries is affiliated through common ownership with a member bank within the meaning of 12 U.S.C. § 221a(b), the Board must determine whether those subsidiaries would

be "engaged principally" in the "issue, flotation, underwriting, public sale, or distribution" of securities within the meaning of Section 20 of the Glass-Steagall Act ("Act"), 12 U.S.C. § 377.

The Office's interest in this matter arises from its status as the primary regulator of national banks and the primary administrator of the National Bank Act, 12 U.S.C. § 1 *et seq.* While the administration of the Bank Holding Company Act and of holding company affiliations pursuant to Section 20 of the Glass-Steagall Act are not a routine aspect of the Comptroller's regulatory or supervisory programs, the Order for Hearing is of interest to us due to the impact of affiliate activities on national bank operations.

* * * *

We wish to address briefly the Board's question concerning whether the Section 20 term "securities" should be interpreted to include all securities, including both "eligible" and "ineligible" securities, as well as its concerns over the possible manipulation of a particular standard (such as volume). As the Board is aware, Section 16 of the Act authorizes national and member banks to engage directly in certain types of securities activities. By the same token, Sections 20 and 32 of the Act permit bank affiliates to engage in activities which a bank itself cannot conduct. *See Board of Governors of the Federal Reserve System* v. *Investment Company Institute*, 450 U.S. 46, 60 (1981) (*"ICI"*). As the Board is also aware, however, the sections of the Banking Act of 1933 which are commonly referred to as the Glass-Steagall Act are generally designed to accomplish the same general purpose, i.e., to preclude commercial banks and their affiliates from engaging in certain types of investment banking activities. Thus, the provisions of the Glass-Steagall Act should be read collectively, in order to ensure a harmonious construction of the Act consistent with its overall legislative purposes. Indeed, as a matter of pure

statutory interpretation, one part of a statute cannot be read in isolation from other parts of the same or related statute. *See, e.g., Securities Industry Association* v. *Board of Governors of the Federal Reserve System*, 468 U.S. 207, 216-21 (1984).

Applying these principles, it is our view that the only proper measure of whether a bank affiliate has crossed Section 20's "principally engaged" threshold is whether that affiliate is engaged in an impermissible level of securities activities which are covered by Section 20. These covered activities, in our view, do not include any activities which a bank may conduct under Section 16 of the Act. A contrary interpretation would lead to the result that a member bank could not be affiliated with a company which engages exclusively in activities which the bank itself could conduct; if the "principally engaged" standard includes bank-eligible securities activities, member banks directly would be able to conduct authorized activities (e.g., underwritings of government and municipal securities) but would not be able to conduct the same activities through an affiliate. This result would be totally at odds with the purposes of the Act and relevant judicial interpretations. *ICI*, *supra*, 450 U.S. at 60. The Court of Appeals for the D.C. Circuit, in fact, recently has affirmed that the provisions of the Act must be read harmoniously, and in order to avoid one section rendering another section "entirely nugatory." *SIA*, *supra*, Slip Op., at 10.

We note that the regulations and administrative interpretations of the Board reflect an understanding that securities activities which member banks may conduct directly under Section 16 of the Glass-Steagall Act should not be included in the measurement of "principally engaged" for Section 20 purposes. Similarly, this analysis is consistent with the Board's interpretations under Regulation R, 12 C.F.R. Part 218, which have consistently exempted from Section 32's prohibition (and from its

"primarily engaged" test) the activities of bank affiliates which are authorized to banks under Section 16 of the Act. In those instances where the Office has had occasion to interpret the provisions of Section 20 and 32, it similarly has relied on this analysis. *See, Decision of the Comptroller of the Currency on the Application to Charter J. & W. Seligman Trust Company, N.A., reprinted in* [1982-83 Transfer Binder] Fed. Banking L. Rep. (CCH) ¶ 99,463 (Feb. 2, 1983); *Decision of the Comptroller of the Currency to Charter Dreyfus National Bank and Trust Company, reprinted in* [1982-83 Transfer Binder] Fed. Banking L. Rep. (CCH) ¶ 99,464 (Feb. 7, 1983).

* * * *

Sincerely yours,

/s/ Dean S. Marriott
DEAN S. MARRIOTT
Senior Deputy Comptroller for Bank Supervision